

36.

To the Right Honourable, the Lords of Council and Session. The Petiti- on of the Merchants of *Edinburgh*.

Humbly Sheweth,

THAT where in the *Action* at the instance of *John Callender* against us for the duty of 12 *shill. Scots* upon the ell of *English Cloath*, imported and Retailled within the Town of *Edinburgh*, during the year wherein he was Tacksman. Your Lordships by interloquitor, upon Report of the Lord *Thurso*, Found, we could not be obliged to give our Oaths thereanent, further than for three moneths preceeding the date of our citation: And by another interloquitor in *December* last, Your Lordships sustained the Custome house Books as probative, only in so far as they were subscribed; And remitted to the Lord *Abercrombie* to take tryal by whom the Entryes were signed, And to Report the same with the other points contained in a Bill than given in by us, according whereinto his Lordship hath drawn out a full list of the Quantities of Cloath; and Persons names that Signs for the same in the Books, which albeit it amounts to a considerable Summ, including what is acknowledged in our Oaths for the three moneths, *John Callender* is so far from being satisfied therewith, that he has had the confidence to trouble your Lops. with a new petition, wherein he aims at no less than to overturn both the forelaid solemn Interloquitors, In that petition he likewise urges, that we may be lyable both for what cloath we imported before, and Retailled the time of his Tack; And for what was imported during his Tack though Retailled after Expiration thereof: To all which we have given in Answers, But your Lordships have given no Deliverance to the last point. Your Petitioners shall not trouble Your Lordships to repeat here what we have laid in our Answers, which we think is sufficient to take off all mentioned in his Bill: But we have more to represent to your Lordships, As *1mo.* That your Lops. having already found that we are not obliged to give our Oaths except for three moneths; And *John Callender* having extracted an Act thereupon, and taken our Oaths upon what we imported in the three moneths, and having betaken himself to, and adduced other probation for the rest of his time, he cannot now be allowed the benefite of our Oaths; Albeit we had no Act of Parliament in our Favour.

2do. If we should now after so long a time, be obliged to depone and purge our selves upon oath, as he pretends, anent all the Books he has patch't up; It would render the priviledge granted to us by Act of Parliament altogether elusory, and to introduce such a practice would in many Respects prove of very dangerous consequence to us and to all the Merchants in the Kingdom. *3tio.* *John Callender* having most willfully and with a Maliceous designe to insnare us, delayed to seek the said duty till long after his Tack was expired, it is highly more reasonable that he should suffer for his negligence in not seeking our oaths quarterly when he might have had the same, then to oblige us to depone upon the quantities of our import or retail upwards of six years since. *4to.* To evidence to Your Lordships, how little regard ought to be had to the Custome Books, your Petitioners can prove that its ordinary to enter one specie of Goods therein for another, & particularly that considerable quantities of prohibited Goods have been entred & marked in the Books for Cloath, for if the Collector get the duty of the goods truly imported they allow the importer to name the goods in the Books as he pleases, and seeing the points contraverted are of very great concern to your Petitioners, both for clearing differences that may arise betwixt Merchants & Tacksmen of the Customs, and for preventing the hazard of Perjury, as also for clearing differences betwixt Prior and Posterior Tacksmen; And that the saids points cannot be so well decided by Bills and Answers wherein, all that is fit to be said cannot be so fully represented, as it would be upon a Debate before your Lordships, *viva voce*, In which we would be able by many irrefragable Arguments, to convince your Lordships of the unreasonableness of *John Callenders* demands.

May it therefore please your Lordships, To take the Premises to Your Serious consideration, and to Assigne a day to your Petitioners to be heard by our Procurators in presentia upon the foresaid debatable points whereby the cause may be fully cleared. According to Justice, and your Lordships Answers.

